

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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OSCAR RAMIREZ, JAVIER GUERRERO,  
GERONIMO HERCULANO, PABLO RUTILIO,  
MAGGIE ANDRES CRECENCIO, GUILLERMO ALVAREZ,  
JUANA CRUZ HERNANDEZ, LEONIDAS MATEO,  
ANYELI OVALLES HERNANDEZ, MIRNA REYES  
MARTINEZ, RAMON ROSARIO, OMAR TAVERAS,  
LUIS ESPINAL, and JUAN SALMERON on behalf of  
themselves and others similarly situated,

Plaintiffs,

v.

M L RESTAURANT, CORP., M.L. SAN JOSE ENTERPRISES, CORP.,  
d/b/a LIBERATO RESTAURANT, ANTONIO MANUEL LIBERATO,  
FERNANDO LIBERATO, VICTOR LIBERATO, NELSON GOMEZ,  
LUCY GOMEZ, SARAH VALLEJO, NANA (LNU), and ROMEO (LNU)  
jointly and severally,

Defendants

-----X  
State of New York )

) ss.:

County of New York )

**No.: 14 -cv- 4030**

**Hon. Valerie E. Caproni**

**AFFIDAVIT OF JUANA CRUZ  
HERNANDEZ IN SUPPORT OF  
PLAINTIFFS' REQUEST FOR  
CONDITIONAL CLASS  
CERTIFICATION**

JUANA CRUZ HERNANDEZ , residing at 1371 Herschell St., Bronx, New York, being  
duly sworn, deposes and says:

1. From on or about September 25, 2012 to on or about September 1, 2014 when I  
resigned, I was employed by Liberato Restaurant as a counterperson and food preparation  
worker.

2. Liberato Restaurant is an establishment with locations at 1 West 183<sup>rd</sup> St. and 10  
West Burnside Avenue, County of the Bronx, State of New York.

3. I worked at the 1 West 183<sup>rd</sup> St. location behind the counter in the dining room. I would prepare food behind the counter, and attend to customers seated at the counter.

4. In the daytime I worked with approximately ten other counter people, and waitresses. In the evenings, I believe approximately another eleven people worked behind the counter and on the dining room floor, if not more.

5. I regularly worked the day shift, nine (9) hours a day, five (5) or six (6) days a week.

6. When I worked five (5) days I received \$200 in wages, and when I worked six (6) days I received \$240. I was paid weekly in cash.

7. On two (2) days a week, for approximately three (3) hours a day, I worked in the basement preparing food such as salads and juices.

8. When I was working behind the counter, I received tips from customers.

9. At all times, I was required to hand my tips to the manager, who held onto them for the shift and pooled the tips. At the end of the shift, the manager returned the pooled tips to us to distribute.

10. No manager ever told me that my tips were being counted as wages, or explained how the tip pool worked.

11. I never received any record of the tips I received from the pool, nor did my coworkers.

12. At least twice a week, when the regular sandwich maker or deli person had a day off, counter people and waitresses were required to share tips with the substitute sandwich maker or deli person, even though that person did not serve customers directly.

13. I never received overtime for hours worked in excess of forty (40) per week, nor did my coworkers and believe this is typical of the workplace.

14. Throughout my time at Liberato, I worked without breaks. I received only five (5) or ten (10) minutes to eat.

15. From the time I began to work at Liberato I never received a statement of wages. I never heard of or saw anyone receive wage statements when they received their pay.

16. At all times in order to receive my pay I was required to sign in a book kept by the manager. When I worked five days a week I was required to sign beside a record stating that I received \$200 in salary and \$150 in tips, but I never received so much in tips. When I worked six days a week I was required to sign beside a record stating that I received \$240 in salary and \$170 in tips, but I never received so much in tips.

17. I believe that my coworkers and I were subjected to similar treatment.

WHEREFORE, it is respectfully urged that the request for conditional certification of a representative class be granted.

Sworn to before me this

25<sup>th</sup> day of September 2014.

  
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JUANA CRUZ HERNANDEZ

  
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Notary Public

REBECCA T. ISHAK  
Notary Public, State of New York  
No. 01IS6286012  
Qualified in Queens County  
Commission Expires July 22, 2017